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May 22, 2023

Via: ECF

Honorable Jessica S. Allen, U.S.M.J.
United States District Court
Martin Luther King Building & U.S. Courthouse
50 Walnut Street
Newark, New Jersey 07102

Re: *D'Ambly v. Exoo, et al.*,
Civil Action No. 2:20-cv-12880-JMV-JSA
Plaintiff's response to One Peoples Projects opposition to Motion to Compel

Your Honor,

As you know this office represents Plaintiff, Daniel D'Ambly (hereinafter "Plaintiff") in the above-referenced action. Currently pending in this matter is Plaintiff's Motion for an Order to Show cause as to why One Peoples Project should not be held in contempt for failing to respond to Plaintiff's *Subpoena duces tecum*. (ECF No. 160). Please accept this letter brief in lieu of a more formal brief as Plaintiff's response to One Peoples Project's opposition to Plaintiff's Order to Show Cause.

BRIEF PROCEDURAL BACKGROUND

On November 30, 2021, Plaintiff filed the Second Amended Complaint ("SAC") that named Torch Antifa Network as a defendant. (ECF No. 103). On December 4, 2021, Plaintiff arranged for a professional process server to serve a copy of the Summons and SAC on Torch Antifa Network ("Torch") via One Peoples Project. Neither Torch nor One Peoples Project answered or otherwise responded to the Complaint and/or timely objected to the Subpoena.

On May 10, 2022, the Clerk of the United States District Court, for the District of New Jersey entered default against Torch on May 10, 2022. (ECF Nos. 132 and 133). On May 16, 2022, Plaintiff served the subpoena on Torch via One Peoples Project's alleged registered agent "Pennsylvania Registered Agent, Inc.," at 507 West 7th Street, Suite 100, Erie, Pa. 16502, and on May 23, 2022, Plaintiff served the subpoena on Torch via One Peoples Project at P.O. Box 3151, New Brunswick, New Jersey 08903, which is the business address listed on One Peoples Project's filings with the Internal Revenue Service. Plaintiff further served the subpoena on One Peoples Project at 383 Hillcrest Avenue, Somerset, New Jersey 08873 on May 13, 2022.

Plaintiff's instant motion is to compel One Peoples Project to comply with the subpoena and produce documents, things, and electronically stored information for www.torchantifa.org was filed April 12, 2023. (ECF No. 160). Plaintiff served the motion on One Peoples Project at its Pennsylvania agent on April 17, 2023, and at its Somerville, New Jersey location on April 24, 2023.

LEGAL ARGUMENT

On the date that the subpoena was served, both Torch and One Peoples Project were non-parties to the instant action. Torch was a non-party by virtue of the Clerk's entry of default, and One Peoples Project has never been a party to this action.

In their opposition papers, One Peoples Project mistakenly argues that Plaintiff's subpoena is invalid according to *Fed. R. Civ. P. 26(d)(1)*, because the subpoena was served prior to the *Rule 26(f)* conference. One Peoples Project further mistakenly argues that Plaintiff seeks to hold One Peoples Project accountable for the conduct of Torch Antifa Network. (ECF No. 166). Both arguments are without merit.

Firstly, Plaintiff is not seeking to hold One Peoples Project “accountable” for Torch. Plaintiff is seeking to obtain documents, things, and electronically stored information concerning Torch’s internet domain www.torchantifa.org. Torch has no formal organizational structure. Torch is not incorporated, organized as a limited liability company, limited liability partnership, or any other recognized legal entity. Torch does not have a known mailing or physical address. Torch’s only known method of contact is through the owner and registrant of its internet domain www.torchantifa.org, which at all times relevant was One Peoples Project.

Fed. R. Civ. P. 26 governs the timing of when parties can request discovery. *Rule 34* governs discovery requests made to parties, and *Rule 45* governs discovery requests made to non-parties. Pursuant to *Fed. R. Civ. P. 34(c)* “[a]s provided in *Rule 45*, a nonparty may be compelled to produce documents and tangible things or to permit an inspection.” *Fed. R. Civ. P. 34* “unquestionably applies only to parties” and *Rule 45* directs non-parties to produce documents, things, and electronically stored information. *Hasbro, Inc. v. Serafino*, 168 F.R.D. 99, 100 (D. Mass. 1996). The time to respond to a *Rule 34* request delivered before the parties’ *Rule 26(f)* conference is 30 days after the first *Rule 26(f)* conference. *Fed. R. Civ. P. 34* advisory committee’s note (2015).

Rules 26, 34, and 45 must be construed *in pari materia*. *Chemical Specialties Co. v. Ciba Pharmaceutical Products, Inc.*, 10 F.R.D. 500, 502 (D.N.J. 1950). In the instant action, the *Rule 26(f)* conference was conducted on November 30, 2022, thus, One Peoples Project was required to produce documents, things, and electronically stored information sought under Plaintiff’s subpoena no later than December 30, 2022. One People’s Project has not complied with its obligations to produce the documents, things, and electronically stored information sought under the subpoena. In fact, in or about November 2022, One Peoples Project transferred

the content of www.torchantifa.org to www.torch-antifa.org, which is owned and registered by an unknown third-party.

As a result of Torch's default, in accordance with *Rule 8(b)(6) of the Federal Rules of Civil Procedure*, Plaintiff's allegations concerning liability are deemed admitted and Torch, nor anyone else has standing to challenge the factual allegations and is not permitted to introduce evidence to controvert those allegations. However, One Peoples Project's opposition contains several inappropriate factual challenges. Further, One Peoples Project never served a written objection to the subpoena as required by *Rule 45(d)(2)(B)*, they simply chose to ignore their obligations under the subpoena.

For the foregoing reasons, Plaintiff respectfully requests that One Peoples Project be compelled to produce documents, things, and electronically stored information concerning www.torchantifa.org as requested under the subpoena.

Respectfully submitted,



May 22, 2023

Patrick Trainor, Esq.
Attorney for Plaintiff Daniel D'Ambly

cc: All counsel of record via ECF